HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 416 of 2004 (S/S)
Hari Ram and Others
Vs
Commissioner Garhwal Division & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 23.04.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 416 of 2004 (SS)

Hari Ram and Others ……. Petitioners

Versus

Commissioner Garhwal Division & others ……. Respondents

Sri Gopal Narayan, Advocate for the petitioners.
Standing Counsel for the respondents.

Dated: 23.04.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner have prayed for the issue of a writ of certiorari quashing the order dated 31.1.2004, annexure-2 to the writ petition passed by respondent no. 1, Commissioner, Garhwal Division.

Briefly stated the facts giving rise to the present writ petition are that petitioner no.1 to 8 were appointed as Safai Karmchari under the employment of respondent no. 2 to 4. The respondents Nagar Nigam after following the procedure and rules promoted 30 Safai Karmchari on the post of supervisor. In the mean time respondents no. 5 to 7 filed an appeal before respondent no.1 challenging the promotion on the post of Nagar Nigam. The respondent no.1 without

issuing any notice and hearing the petitioners vide order dated 30.01.2004 stayed the promotion order. The order of the respondent no.1 dated 30.01.2004 reads as under:

आदेश

आज प्रस्तुत विद्वान अधिवक्ता को सुना । अपील सुनवाई हेतु ग्रहण की जाती है । विपक्षी को नोटिस जारी हो तथा अभिलेख पत्रावली प्रापत की जाए । आगामी तिथि 27.2.04 को प्रस्तुति हो तब तक नगर निगम क्षरा सिनेटरी सुपरवाईजरों के पद पर की गई आक्षेपित पदोन्नतियों को स्थगित किया जाता है ।

A perusal of the above order shows that the Commissioner has not applied his mind while passing the order nor he has given opportunity to the petitioners to be heard. The order passed by the respondent no.1 cannot be said to be justified. The order passed in the appeal without hearing the petitioner is also in violation of the principles of natural justice as held by the Apex Court in the case Ramrao and others vs. All India Backward Class Bank Employees Welfare Association and others, (2004) 2 SCC 76. The Hon'ble Supreme Court has held that in a writ petition challenging promotion, persons promoted by order have to be impleaded as parties. In such a case the persons promoted under the impuged promotion order, held were necessary parties. Grant of any relief against them without their implement in the writ petition held impermissible. The Apex Court has held as under:

"It is true that the order of promotion was in question in Writ Petition No. 1551 of 1990 at the instance of one Ashok but even in the said writ petition the promotees were not impleaded as parties. As in the case of Association, even in the writ petition filed by Ashok, the order of dereservation passed by the Union of India or NABARD or the sponsor Bank had not bee questioned. Admittedly, the Union of India or NABARD were not parties in the said writ petition. An order issued against a person without impleading him as a party and, thus, without giving him an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably, were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon. In the absence of the "promotees" as parties, therefore, it was not permissible for the High Court of issue the directions by reason of the impugned judgment."

I am not inclined to interfere under Article 226 of the Constitution of India, as the appeal is already pending before the Commissioner but at the same time respondent no. 1 Commissioner Garhwal Division is directed to get the petitioners impleaded in the memo of appeal. Liberty is given to the petitioners to apply to the Commissioner for their impleadment in the appeal as a party. After

impleadment of the petitioners they should be given opportunity to be heard. The appeal shall be disposed of within a period of three months. The order dated 30.1.2004 passed by the respondent no.1 shall remain in abeyance till disposal for the appeal.

Subject to the aforesaid observations the writ petition is disposed of finally. No order as to costs.

23.04.2004 Sd/-
*Dhyani